

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5920 of 1985

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For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KP JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

SERVED for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/08/96

ORAL JUDGEMENT

The petitioner was appointed as a junior clerk on 16th September 1966 and was posted in the office of the Collector. However, on 26th March 1968 he was allocated to the office of Director of Man Power where he reported for duty on 27-3-1968. The seniority of the petitioner in the office of Director of Man Power was determined from the date of his joining service i.e. on 27-3-1968.

The said seniority was later on revised and the petitioner's seniority was determined on the basis of his date of appointment i.e. 16th September 1966. Such revision was made on 7th December 1978.

In the meantime one Mr. Dabhi who was senior to the petitioner under the earlier seniority but became junior under the revised seniority list dated 7th December 1978 was promoted as senior clerk on 20th September 1976. The petitioner was promoted as senior clerk on 17th April 1980. The petitioner feeling aggrieved preferred an appeal being Appeal No. 156/82 before the learned Gujarat Civil Services Tribunal claiming deemed promotion to the post of senior clerk with effect from 20-10-76 with all consequential benefits. Petitioner's claim for deemed promotion was contested by the respondents. It was submitted that irrespective of the petitioner's seniority the petitioner's case for promotion to the post of senior clerk was considered along with Mr. Dabhi. However, at the relevant time the question of permitting the petitioner to cross Efficiency Bar was pending before the competent authority and, therefore, his case for promotion could not be finalized along with that of Mr. Dabhi. Subsequently on 24th December 1976 the petitioner was permitted to cross Efficiency Bar and was also offered promotion and was posted at Jamnagar. The petitioner did not accept the order of promotion and ultimately by letter dated 7-2-77 forego his right to promotion. The petitioner was thereafter promoted on 11-2-80 and was posted at Gondal. Said order was revised and on 28th March 1980 the petitioner was once again offered promotion and was posted at Dahod. The said order also was revised and on 17th April 1980 the petitioner was promoted as senior clerk and was posted at Ahmedabad. The petitioner accepted the said order of promotion and reported for duty at Ahmedabad.

Considering the relevant facts the learned Tribunal held that the petitioner's case for promotion should have been considered immediately after he had forgone his right to promotion on 7-2-1977. Such promotions were made on 28th August 1977. Considering this date the learned Tribunal directed that the petitioner be given deemed promotion with effect from 28th August 1977 and his pay be fixed accordingly. The learned Tribunal further directed that the petitioner will be entitled to receive actual difference of salary with effect from 23rd April 1980, the date on which he reported for duty as senior clerk.

Learned Advocate Mr.Thakkar appears for the petitioner and submits that had the petitioner been offered promotion on 20th October, 1976 he would have been posted at Bhavnagar and he would have accepted the order of promotion. However, on account of inaction on the part of the respondents the petitioner was not promoted until 24th December 1976 and he had to forego that promotion on account of his posting at Jamnagar. Thus the petitioner was entitled to deemed promotion with effect from 20th October 1976. He has further submitted that since he was deprived of his right to promotion account of inaction of the respondents, he should be permitted to draw the amount of difference of salary from the date of his deemed promotion and not from the date from which he started to officiate as senior clerk.

In my view, the learned Tribunal has correctly assessed the facts of the case. In view of the petitioner's refusal to accept promotion made on 24th December 1976 his claim for promotion from the earlier date i.e.. 20th October 1976 is of no consequence. The petitioner having refused to accept the order of promotion he cannot claim deemed promotion with effect from the date earlier than the date of his refusal. Thus, the petitioner has rightly been given promotion to the post of senior clerk with effect from 28th August 1977.

In support of the claim for actual monetary benefits from the date of deemed promotion the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the matter of State of Gujarat vs. S.Tripathi and Another(27(2) G.L.R. 1391) and Savan Ram Malra vs. Union of India and Ors. (JT 1995(7)S.C.334).

In both the above matters, considering the facts of the case, the court allowed the actual monetary benefits flowing from the orders of the court. However, in neither of the above cases the court has held that in case of grant of deemed promotion the court must allow the monetary benefits also. Mr.Thakkar has also relied upon the judgment of this court in the matter of Pratapsingh Mukhtiarasing. vs. Union of India(1983 G.L.T. 133) This court considering the facts before it has held that:

"The petitioner cannot be allowed to suffer because of the mistake of the employees of the Railway Administration. Had they not committed the mistake, he would have earned promotion early and notionally he was recognised to have been

given that promotion. The question is why he should not get salary for the period during which he was kept away from that higher job to which he was entitled. For no fault of his, he was denied that higher salary and, therefore, he was entitled to the arrears".

On the facts of the present case, it cannot be said that the petitioner was denied promotion on account of mistake committed by the respondents or by any other person. The aforesaid judgment therefore cannot lend support on the facts of the present case.

Grant of consequential benefits is a matter of discretion of the court. In the present case the learned Tribunal considering the facts on record has decided that the petitioner should receive the difference of salary from 23rd April 1980 and not from the date of deemed promotion. I do not find any reason to interfere with the discretion exercised by the learned Tribunal. I, therefore, reject the petitioner's claim for difference of salary from the date of deemed promotion till the date of actual promotion.

The petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.
